

VI. The Commission Should Apply Its Proposed Gross Book Cost Methodology When Applying The Pole Attachment Formula To Conduits.

For reasons similar to those stated previously with regard to pole accounts, USTA believes that in those instances where the Commission must resolve conduit rate disputes, the upper bound of the zone of reasonableness should be determined using its proposed gross book methodology. Although conduit accounts do not presently appear to be in danger of becoming negative as is the case with pole accounts, there are still significant advantages for using the gross book method over that of the net book method. As with pole accounts, gross book figures are publicly available, permitting the attacher to examine the figures for itself. Although current ARMIS data reporting requirements exclude Tier 2 LECs that are conduit owners, such data, nevertheless, still provide a large degree of public inspection.

Moreover, use of the Commission's proposed gross book cost methodology with pole accounts argues for use of the same gross book cost methodology with conduit accounts for sheer consistency's sake. There is no logical reason why both pole and conduit accounts should not use the same methodology. If the Commission adopts the use of the proposed gross book methodology for poles, as USTA urges, there is no reasonable accounting argument that conduit accounts should not also be calculated using the same gross book methodology. By promoting consistency in utilizing the same methodology for both accounts, the Commission will reduce the potential for accounting confusion.

Use of the proposed gross book cost methodology will also eliminate any pricing

distortions that might arise from having pole rates calculated with the gross book method while conduit rates are calculated using the net book method. Such conjecture may be both premature and impossible to make accurately due to the rate's dependency on the local conditions of each LEC's poles and conduit. Nevertheless, it seems reasonable to postulate that having one attachment rate determined using the Commission's proposed gross book methodology and the other with the Commission's proposed net book methodology may create an artificial pricing differential. Such a differential may send erroneous signals to attachers about the appropriate attachment medium. Consequently, attachers may rely more heavily, for example, on poles as opposed to conduit than they would otherwise.

USTA agrees with the Commission's tentative conclusion that, unlike poles, conduit accounts do not contain any investment that supports telephone company operations exclusively.⁴⁰ The switch from open wire to insulated plant within the LEC industry means that, even when using poles, LECs are no longer installing equipment such as cross-arms that must be subsequently factored out. The use of conduit takes this trend even further. Accordingly, there should be no adjustment factor for application against conduit-related investment by LECs.

VII. The Commission's Proposed Conduit Formula Is A Reasonable Proposal Based On Reasonable Assumptions And Is Relatively Easy To Administer.

The Commission is correct when it tentatively concludes that "measuring the actual

⁴⁰ Notice, ¶ 42.

portion of duct space occupied by an attachment could be difficult and lead to further disputes between the parties.”⁴¹ The use of reasonable approximations and averages is just as applicable with conduit as it is with poles. The proposed half-duct convention that the Commission derives from a Massachusetts Department of Public Utilities decision⁴² is a reasonable approximation. The relevant language of Section 224 leaves little ambiguity that the space to be calculated is the occupied space.⁴³ Recognizing the extreme difficulty, if not impossibility, of physically measuring the actual amount of space occupied by an attacher in a conduit system, the Commission has previously utilized the half-duct methodology.⁴⁴ The adjustment for reserved ducts in the occupied space component of the proposed conduit methodology is reasonable and equitable. Subtracting the number of reserved ducts from the component ensures that the cost of the benefit is properly distributed only across those attaching parties with access to the reserved ducting.

The adoption of a rebuttable half-duct presumption is a reasonable, equitable, and administratively simple method for approximating the space occupied by an attacher. Furthermore, the half-duct methodology would relieve parties of the burden of proving the

⁴¹ Notice, ¶ 44.

⁴² Id.

⁴³ Section 224(d)(1) “...an amount determined by multiplying the percentage of the total usable space, or space of the total duct or conduit capacity, which is occupied by the pole attachment...”

⁴⁴ See generally Multimedia Cablevision, Inc. v. Southwestern Bell Telephone.

amount of space actually occupied and avoid all the attendant disputes surrounding use of such a figure.

VIII. Most Of The Spatial Changes Suggested By The Electric Utilities In The Whitepaper Referenced Within The Notice Are Inappropriate And Should Not Be Adopted By The Commission.

In the Notice, the Commission seeks comment on three different spatial issues regarding poles. The Commission inquires whether the forty inch separation space between electric utility attachments and telecommunications attachments should be assigned to the utility as part of its usable space.⁴⁵ Based on statements made by the electric utilities in a previously submitted Whitepaper,⁴⁶ the Commission also inquires whether pole heights have changed such that its rebuttable presumptions of average pole height and usable space should be modified.⁴⁷ Finally, the Notice seeks comment on a proposal made by the electric utilities within the same Whitepaper to exclude thirty-foot poles from pole formula rate calculations because of their allegedly insufficient stature.⁴⁸

⁴⁵ Notice, ¶ 19. USTA assumes that the term “utility” as used here means “electric utility” and does not include LECs as is the case with the statutory definition within Section 224.

⁴⁶ Whitepaper filed by law firm of McDermott, Will and Emery on August 28, 1996. (“Whitepaper”)

⁴⁷ Notice, ¶ 18. See also Whitepaper pp. 9-12.

⁴⁸ Notice, ¶ 20. See also Whitepaper pp. 9, 13.

A. Placing Appurtenances Inside The Forty Inch Safety Space Is Practiced Predominantly By Electric Utilities To Avoid The Costs Of Pole Change-outs And Poses A Distinct Safety Risk.

ILECs are increasingly faced with situations wherein electric utilities are placing appurtenances inside the forty inch separation space. The forty inch space serves to protect communications workers as much as it does utility workers. Furthermore, the separation requirement emanates from the obligation of each and every party attached to a pole to be in compliance with the National Electric Safety Code (NESC). The consequences of placing appurtenances within the safety space that violate the NESC apply equally to both electric utilities and telecommunications service providers.

Given the choice between paying the change-out costs for a taller pole or pushing the envelope of the NESC safety margins, electric utilities are opting for the latter. When a communications attacher--be it ILEC, CLEC, or CATV--needs to attach a pole-mounted appurtenance supporting the service provided via the longitudinal wire attachment, it is typically placed on the pole below the wire attachment. This is done for two reasons. It is safer than placing it in the forty inch separation space, and electric utility pole owners typically refuse such requests out of hand. Unlike the electric utilities, which utilize the unusable safety space to avoid paying the cost of changing out to a taller pole, ILECs, CLECs, and CATV place pole-mounted appurtenances below the wire attachment because that is the only space available to them as attachers. Furthermore, the presence of pole-mounted appurtenances below the wire attachment is immaterial to the height of the pole. Minimum longitudinal wire ground clearance is necessary

even if there are no other attachers. In many instances, even though the pole-mounted appurtenance is below the wire attachment, it is still above the minimum wire grade level, so it is not occupying unusable space. In those cases where the pole-mounted appurtenance does protrude below the minimum wire grade level, such non-wire appurtenances mounted on the pole in accordance with the NESC pose little or no danger to any worker or passersby.⁴⁹ In contrast, appurtenances placed in the separation space by electric utilities markedly increase the danger to all workers.

B. The Commission Should Not Alter Its Present Rebuttable Presumptions About Pole Heights And Average Usable Space.

The Whitepaper states that:

“The [electric utilities] believe that an average pole height of between 35 feet and 40 feet is no longer accurate. Over time, in light of the growing demand for access to poles by cable operators and others, 35 foot poles have been replaced with 40 foot and taller poles, to accommodate the demand for space. Although 45 foot or taller poles are in service, the [electric utilities] believe that, on average, the pole height of poles used for cable operators and other attachees is 40 feet. The [electric utilities] urge the adoption of a 40 foot pole as the average pole height.”⁵⁰

Based on this forty-foot pole assumption, the Whitepaper then proceeds to attribute what its

⁴⁹ See Interconnection Order at ¶ 1177. (“[The Commission] believe[s] that section 224(f)(2) reflected Congress’ acknowledgment that issues involving capacity, safety, reliability and engineering raise heightened concerns when electricity is involved, because *electricity is inherently more dangerous than telecommunications services*.”) (emphasis added)

⁵⁰ Whitepaper, p. 10, footnote omitted.

authors deem to be proper spatial allocations on poles, including, among other things, the submission that LECs occupy between two and three feet of pole space, and that minimum ground clearance is more properly set at 19.8 feet.⁵¹ Finally, the Whitepaper suggests that, based on the spatial allocations advocated by its authors, the proper amount of usable space on a forty-foot pole is eleven feet and that the other than usable space accounts for twenty-nine feet.⁵²

The Whitepaper is incorrect when it states that pole heights have increased due to the demands of cable operators and other attachers.⁵³ In fact, the spatial needs of individual cable operators and LECs have remained constant or even decreased slightly. Nor has the influx of new facilities-based competitors into new markets yet increased the demand for taller poles to the extent that the Whitepaper alleges. Rather, the demand for taller poles is derived solely from the increased spatial needs of the electric utilities. LECs do not need nor benefit from pole change-outs necessitated by the electric utilities' increasing reliance on taller poles to accommodate their own distribution requirements. The suggested spatial changes should be viewed with this fact in mind.

The suggestion that LECs occupy between two and three feet of pole space, on average, is simply untrue. It is remotely possible that there may exist rare, isolated instances where LEC requirements necessitate occupying that much space, but to color such exceptions as the norm is

⁵¹ Id.

⁵² Id., at p. 12.

⁵³ Id., at p. 10.

misleading. Telecommunications space is set aside on a general basis and does not equate to the idea that such space is necessarily fully occupied by telecommunications attachments. If three feet of pole space is set aside for use by any non-CATV telecommunications service, the utility certainly cannot expect to charge a LEC occupying one-third of that three foot space for the entire three feet. LECs do not average between two and three feet of occupied pole space, and suggestions to the contrary should be discounted.

Likewise, the Commission has previously ruled on the matter of what it considers the appropriate figure for minimum pole ground clearance.⁵⁴ The procedures used to connect attachments to poles have not changed such that the Commission should discard the current eighteen-foot figure in light of the greater figure proposed by the Whitepaper. The arguments put forth in the Whitepaper urging the Commission to adopt a greater ground clearance figure are the same that were previously rejected by the Commission. The Whitepaper offers no new evidence to suggest that the Commission should not similarly reject these arguments again. The net effect of the suggestions contained within the Whitepaper is to artificially inflate the amount of other than usable space while simultaneously artificially decreasing the amount of usable space. The end result will be higher attachment rates than would otherwise be the case when the Commission finishes its forthcoming proceeding to implement the requirements of Section

⁵⁴ See generally Petition to Adopt Rules Concerning Usable Space on Utility Poles, Memorandum Opinion and Order, RM 4558, FCC 84-325 ("Usable Space Order," slip op.)

224(e).⁵⁵ The Commission should not alter its present rebuttable presumptions about pole heights and average usable space.

C. Eliminating Thirty-foot Poles From Rate Calculations Would Inexplicably Exclude Significant Investment And Disproportionately Affect LECs.

The Notice seeks comment on the suggestion in the Whitepaper that poles of thirty feet or less be excluded from the calculations of the cost of bare pole.⁵⁶ Eliminating thirty-foot poles from the calculations would disproportionately affect the LEC industry. LECs have invested substantially in deploying thirty-foot poles to accommodate their own needs and the needs of other attaching telecommunications service providers. Furthermore, to the extent that electric utilities have chosen not to attach to such poles, such avoidance has been both conscious and volitional. Either the location of such poles did not coincide with their own power distribution plans, or they have been unwilling to shoulder the cost of replacing those poles if the envisioned arrangement of their attachments on a thirty-foot pole would have violated the NESC.

The stated rationale for excluding thirty-foot poles is that they are too short to

⁵⁵ Under the requirements of Section 224(e), attachers will be obligated to cover the costs of two-thirds of the other than usable space allocated evenly among all attaching entities. Under Section 224(g), pole owners are required to self-impute their own costs of attachment. Increasing the other than usable space while decreasing the usable space lowers the pole owner's self-imputed costs and raises those of the attachers.

⁵⁶ Notice, ¶ 20.

accommodate multiple attachments.⁵⁷ This contention is incorrect and misleading. Using the Commission's current spatial measurements, a thirty-foot pole has six feet of usable space. Using the spatial measurements advocated by the electric utilities within the Whitepaper, the amount of usable space is reduced to four feet. The Whitepaper statement about thirty-foot poles being too short is true only through the artificial elimination of two feet of usable space. In fact, thirty-foot poles presently are accommodating multiple attachments, so there can be no question about their capability to do so. It is misleading to claim that thirty-foot poles are too short without acknowledging that such a claim is plausible only after artificially decreasing the amount of usable pole space. This suggestion is particularly disingenuous in light of the fact that any increased demand for taller poles to date has been the result of the needs of the electric utilities, not the attaching LECs or cable operators.

The Whitepaper's proposal to eliminate thirty foot poles from the rate calculations is also self-contradictory. Pole investment is tracked in dollar amounts, not by actual pole size. The Whitepaper argues in favor of using averages and reasonable assumptions and against maintaining a detailed database to track individual pole data.⁵⁸ The Whitepaper maintains that keeping track of pole-by-pole data would be prohibitively costly, and, furthermore, that, "[p]ole-by-pole information of this type is not maintained by the [electric utilities]..."⁵⁹ To then turn

⁵⁷ Whitepaper at p. 13.

⁵⁸ Id. at pp. 6-7

⁵⁹ Id. at p. 6.

around and advocate that thirty-foot poles be disregarded in rate calculations presupposes that pole owners are able to identify individual poles, an information requirement which the electric utilities affirmatively claim not to maintain themselves.


USTA agrees with the Whitepaper when it states that the Commission should continue to rely upon averages and reasonable assumptions when resolving pole rate disputes. Extracting individual pole information is exceedingly difficult, and maintaining a database similar to that to which the Whitepaper alludes would be prohibitively costly. Identifying and extracting thirty-foot poles from rate calculations would entail those very same administrative costs which the Whitepaper argues against. The idea of eliminating thirty-foot poles from bare pole cost calculations is based on number manipulation, would disproportionately affect LEC pole owners, and would inexplicably disregard the substantial costs of actual infrastructure investments.

CONCLUSION

For the above-stated reasons, USTA urges the Commission to adopt its proposed gross book cost methodology when called upon to resolve pole attachment rate complaints. The gross book method should also be extended to disputes over conduit attachment rates. The Commission should fill in the gap left by Congress concerning disputes between ILECs and utilities by extending the pole attachment complaint process to such disputes in those states where the Commission has jurisdiction. The Commission should adopt its proposed mapping of Part 32 accounts. The Commission should also adopt its proposed rebuttable half-duct occupancy assumption. Finally, the Commission should not adopt the inappropriate and misleading spatial changes proposed by the Whitepaper.

Respectfully submitted,

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APPENDIX A
FCC-Proposed Gross Book Method Pole Attachment Formula

$$\text{Maximum Rate} = [(A/E) * (F/G) * 0.95 * u] + [(D/E) * (F/G) * 0.95 * v]$$

A	=	Pole Investment, Account 2411
B	=	Pole Depreciation Reserve
C	=	Accumulated Deferred Income Tax, Poles
D	=	Net Pole Investment (A - B - C)
E	=	Number of Poles
F	=	Space Occupied by Attachment
G	=	Total Usable Space
H	=	Gross Plant Investment, Account 2001
I	=	Gross Plant Depreciation Reserve
J	=	Gross Plant Accumulated Deferred Income Tax
K	=	Net Plant Investment (H - I - J)
L	=	Administrative Expense, Accounts 6710 + 6720 + 6110 + 6120 + 6534 + 6535
M	=	Administrative Expense Carrying Charge (L / H)
N	=	Maintenance Expense, Account 6411
O	=	Rental Expense, Poles
P	=	Maintenance Carrying Charge [(N - O) / A]
Q	=	Depreciation Rate, Poles
R	=	Operating Tax Expense, Accounts 7210+7220+7230+7240+7250
S	=	Tax Carrying Charge (R / K)
T	=	Rate of Return
u	=	Administrative, Maintenance, and Depreciation Carrying Charges (M + P + Q)
v	=	Tax and Rate of Return Carrying Charges (S + T)

APPENDIX B

Table 1: Comparison of Impact on Pole Rates Between Commission's Proposed Gross Book Method and Commission's Proposed Corrected Net Book Method.

Respondent	Company Type	Percentage Difference Between Proposed FCC Gross Book Method from Present Net Book Method	Percentage Difference Between Proposed FCC Corrected Net Book Method from Present Net Book Method
Company A	Tier 1	17.0%	36.0%
Company B	Tier 1	8.5%	175.0%
Company C	Tier 1	2.1%	59.7%
Company D	Tier 1	13.1% -- 32.4%	N/A
Company E	Tier 2	N/A	N/A
Company F	Tier 2	N/A	N/A
Company G	Tier 1	17.0%	410% -- 2456%

Table 2: Comparison Between Median Rates Electric Utilities Charge ILECs Versus Median Rates ILECs Charge Non-Utility Telecommunications Service Providers.

Respondent	Company Type	Min. Rate Charged to ILEC by Electric	Max. Rate Charged to ILEC by Electric	Median Rate Charged to ILEC by Electric	Percentage Difference Between Median Electric Rate and Median ILEC Rate
Company A	Tier 1	1.00	28.09	5.59	121.0%
Company B	Tier 1	10.02	37.52	23.77	392.0%
Company C	Tier 1	N/A	N/A	N/A	N/A
Company D	Tier 1	6.17	22.27	11.40	266.6%
Company E	Tier 2	7.00	9.00	8.00	N/A
Company F	Tier 2	1.00	7.50	7.50	329.0%
Company G	Tier 1	4.80	48.00	19.64	111.0%